

\_\_\_\_\_ BILL NO. \_\_\_\_\_

INTRODUCED BY \_\_\_\_\_

(Primary Sponsor)

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE TRANSFER OF CERTAIN DEFENDANTS WITH A MENTAL DISEASE OR DEFECT BETWEEN THE DIRECTORS OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND THE DEPARTMENT OF CORRECTIONS; AMENDING SECTION 46-14-312, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 46-14-312, MCA, is amended to read:

**"46-14-312. Sentence to be imposed -- commitment to director of department of public health and human services subject to transfer to custody of director of department of corrections -- court review -- transfer -- conditions.** (1) If the court finds that the defendant at the time of the commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply ~~and the~~. The court shall sentence the defendant to be committed for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1) to the director of the department of public health and human services, subject to the transfer to the custody of the director of the department of corrections. The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) The defendant must be committed to the custody of the director of the department of public health and human services to be placed, after consideration of the recommendations of the mental health professionals providing treatment to the defendant, in an appropriate ~~correctional or~~ mental health facility, as defined in 53-21-102, for custody, care, and treatment ~~for a definite period of time not to exceed the maximum term of~~

1 ~~imprisonment that could be imposed under subsection (1).~~ The director may, after considering the  
2 recommendations of the mental health professionals providing treatment to the defendant, ~~subsequently transfer~~  
3 the defendant to ~~another correctional or~~ any mental health facility that will better serve the defendant's custody,  
4 care, and treatment needs without further court order. ~~The authority of the court with regard to sentencing is the~~  
5 ~~same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are~~  
6 ~~provided for.~~

7 ~~(3)~~(4) The professional person in charge of the defendant's care while committed to the custody of the  
8 director of the department of public health and human services shall review the defendant's status at least  
9 annually to determine if any of the conditions in subsection (7) exist. If the professional person finds that one  
10 of the conditions in subsection (7) exists, the professional person shall inform the director of the department of  
11 public health and human services and the director of the department of corrections. If a condition for transfer  
12 exists, the director of the department of public health and human services may, without further court order,  
13 transfer the defendant to the custody of the director of the department of corrections, who is authorized to place  
14 the defendant in an appropriate correctional facility or program, as described in 53-1-202, which must include  
15 supervision of the treatment of any continuing mental disease or defect, for the completion of the sentence.

16 (5) The director of the department of corrections may, without further court order, transfer the defendant  
17 to the custody of the director of the department of public health and human services for placement in an  
18 appropriate mental health facility, after considering the recommendations of the mental health professionals  
19 providing treatment to the defendant, if:

20 (a) the defendant fails to comply with recommended treatment for a mental disease or defect while in  
21 a community correctional facility or program or while under intensive supervision or probation and parole; and

22 (b) the failure to comply has caused a serious deterioration in the defendant's mental condition.

23 (6) Either the director of the department of public health and human services, the director of the  
24 department of corrections, or a defendant whose sentence has been imposed under subsection (2) may petition  
25 the sentencing court for review of the sentence if the professional person ~~certifies~~ in charge of the defendant's  
26 care finds that one of the conditions in subsection (7) exists. The sentencing court may make any order not  
27 inconsistent with its original sentencing authority, except that the length of confinement or supervision must be  
28 equal to that of the original sentence.

29 (7) The conditions for transfer of custody to the director of the department of corrections or review of  
30 a sentence are:

- 1 (a) the defendant no longer suffers from a mental disease or defect;
- 2 (b) the defendant's mental disease or defect no longer renders the defendant unable to appreciate the
- 3 criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law;
- 4 (c) the defendant suffers from a mental disease or defect but is not a danger to the defendant or others;
- 5 or
- 6 (d) the defendant suffers from a mental disease or defect that makes the defendant a danger to the
- 7 defendant or others, but:
- 8 (i) there is no treatment available for the mental disease or defect;
- 9 (ii) the defendant refuses to cooperate with treatment; or
- 10 (iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or defect.
- 11 ~~(4) The sentencing court may make any order not inconsistent with its original sentencing authority,~~
- 12 ~~except that the length of confinement or supervision must be equal to that of the original sentence. The~~
- 13 ~~professional person shall review the defendant's status each year."~~

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15 **NEW SECTION. Section 2. Effective date.** [This act] is effective July 1, 2003.

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